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Attorneys for Defendants  
THE LIFE INSURANCE COMPANY  
OF NORTH AMERICA; THE INDUS  
INTERNATIONAL, INC. LONG TERM  
DISABILITY PLAN; THE VENTYX, INC.  
LONG TERM DISABILITY PLAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VALERIE ZGONC,

Plaintiff,

v.

THE LIFE INSURANCE COMPANY OF  
NORTH AMERICA; THE INDUS  
INTERNATIONAL, INC. LONG TERM  
DISABILITY PLAN; THE VENTYX, INC.  
LONG TERM DISABILITY PLAN; and DOES 1  
through 20, inclusive,

Defendants.

Case No.:

**NOTICE OF REMOVAL OF CIVIL  
ACTION UNDER 29 U.S.C. §1332(e)(1)  
(FEDERAL QUESTION - ERISA)**

**FAXED**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

**PLEASE TAKE NOTICE** that defendants Life Insurance Company of North America ("LINA"), sued herein as The Life Insurance Company of North America, The Indus International, Inc. Long Term Disability Plan and The Ventyx, Inc. Long Term Disability Plan (hereinafter referred to as "Defendants") hereby remove this action to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, on the ground that the action arises under the Employee Retirement Income Security Act of 1974, 29 USC § 1001 et

**NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §1441 PURSUANT TO 29 U.S.C. §1332(e)(1)  
(FEDERAL QUESTION - ERISA)**

316996.1

seq. ("ERISA") and therefore is removable to this Court under 28 U.S.C. section 1441(b); and that the foregoing facts were true at the time that the Complaint in this matter was filed and remain true as of the date of the filing of this notice of removal, as more fully set forth below.

1. On November 13, 2007, plaintiff filed in the Superior Court of California, in and for the County of San Francisco, a civil action entitled *Valerie Zgonc v. The Life Insurance Company of North America; The Ventyx, Inc. Long Term Disability Plan; and Does 1 through 20, inclusive, Defendants*, bearing Case No. CGC-070469133. (the "Complaint")

2. On November 15, 2007, plaintiff filed a First Amended Complaint entitled *Valerie Zgonc v. The Life Insurance Company of North America; The Indus International, Inc. Long Term Disability Plan; The Ventyx, Inc. Long Term Disability Plan; and Does 1 through 20, inclusive, Defendants*.

3. The Summons was dated November 13, 2007. A copy of the summons and Complaint was served on LINA on December 5, 2007. A true, correct, and complete copy of the summons and complaint served on LINA is attached hereto as Exhibit "1". Each and every allegation stated in the Complaint is incorporated by reference into this notice for purposes of this removal.

4. Defendants have filed this notice of removal within 30 days after receipt of a copy of any pleading, motion, order or other paper from which it was first ascertained that the case is one which is removable, specifically the First Amended Complaint.

5. The other defendants named in the Complaint are merely fictitious parties identified as Does 1 through 20 whose citizenship shall be disregarded for purposes of this removal. *Fristos v. Reynolds Metal Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980).

6. As demonstrated by the following, this action is a civil action over which this Court has jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court pursuant to the provisions U.S.C. §§ 1332, 1441 and 1446 as it involves a federal question.

#### **SUBJECT MATTER JURISDICTION**

1. This Court has jurisdiction under 28 U.S.C. section 1441(b) for matters arising

1 under ERISA. Plaintiffs' claims are based on ERISA and brought pursuant to 29 U.S.C. §§  
2 1132(a)(1)(B)1104(a)(1), 1109, 1132(a)(2) and 1132(a)(3). Claims arising under federal law and  
3 thus are removable to federal court. *Metropolitan Life Ins. Co. v. Taylor*, 481 US 58, 66, 107 S.Ct.  
4 1542, 1547 (1987). This complete preemption operates to confer original federal subject matter  
5 jurisdiction. Based on the facts set forth below, which were true at the time the Complaint was  
6 filed and remain true as of the date of filing of this Notice of Removal, this action is governed by  
7 ERISA and therefore properly removed to this Court.

8 2. Plaintiff alleges that she is entitled to long term disability benefits under the group  
9 policy issued by LINA to her employer Indus International, Inc. (The Complaint, par. 5), under a  
10 policy issued by LINA, Policy number SLK 00300027. (*Id.*) The enforcement of rights under  
11 this policy is governed concurrently by federal law and ERISA. *Pilot Life Ins. Co. v. Dedeaux*,  
12 481 U.S. 41 (1987). (*See also, Stuart v. Unum* 217 F.3d 1145, 1150 (9<sup>th</sup> Cir. 2000).

### 13 CONCLUSION

14 1. Therefore, Defendants file this Notice of Removal of this action from the Superior  
15 Court of the State of California in and for the County of San Francisco, in which it is now pending,  
16 to the United States District Court for the Northern District of California.

17 2. True and correct copies of all process, pleadings, orders and documents pertaining  
18 to this action (and which have been served upon LINA, or which were served or filed by LINA in  
19 this action) are attached hereto as Exhibit "1." LINA is informed and believes, and thereon  
20 alleges, that other than the pleadings attached to this notice of removal, there have been no further  
21 pleadings, process, or orders filed in this action.

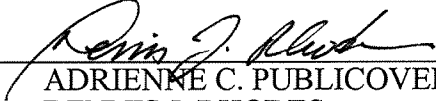
22 3. A Notice to State Court And To Adverse Party is being filed with the Superior  
23 Court of the State of California in and for the County of San Francisco, and will be served on  
24 plaintiff.

1 WHEREFORE, Defendants pray that this action be removed from the Superior Court of the  
2 State of California in and for the County of San Francisco to the United States District Court for  
3 the Northern District of California.

4  
5 Date: December 14, 2007

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

6  
7 By: \_\_\_\_\_

  
ADRIENNE C. PUBLICOVER  
DENNIS J. RHODES  
Attorneys for Defendants  
THE LIFE INSURANCE COMPANY  
OF NORTH AMERICA; THE INDUS  
INTERNATIONAL, INC. LONG TERM  
DISABILITY PLAN; THE VENTYX, INC.  
LONG TERM DISABILITY PLAN

**CERTIFICATE OF SERVICE**

*Valerie Zgonc v. The Life Insurance Company of North America, et al.*  
*San Francisco Superior Court Case #CGC-07-0469133*

I am over the age of eighteen years and am not a party to the within cause. I am employed in the City and County of San Francisco, California and my business address are 525 Market Street, 17th Floor, and San Francisco, California 94105-2725.

On this date I served the following document(s):

**NOTICE OF REMOVAL OF CIVIL ACTION UNDER 29 U.S.C. §1332(e)(1)  
(FEDERAL QUESTION – ERISA)**

on the part(y)(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

→ : **By First Class Mail** -- I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection to the office of the addressee following ordinary business practices.

: **By Personal Service** -- I caused each such envelope to be given to a courier messenger who personally delivered each such envelope to the office of the address.

: **By Overnight Courier** -- I caused each such envelope to be given to an overnight mail service at San Francisco, California, to be hand delivered to the addressee on the next business day.

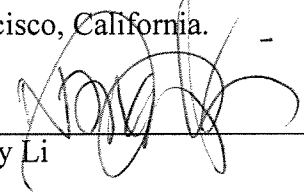
: **Facsimile** -- (Only where permitted. Must consult CCP §1012.5 and California Rules of Court 2001-2011. Also consult FRCP Rule 5(e). Not currently authorized in N.D.CA.)

Terrence J. Coleman, Esq.  
Brian H. Kim, Esq.  
PILLSBURY & LEVINSON, LLP  
The Transamerica Pyramid  
600 Montgomery Street, 31<sup>st</sup> Floor  
San Francisco, CA 94111  
Tel: (415) 433-8000  
Fax: (415) 433-4816

*Attorneys for Plaintiff*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

EXECUTED on **December 14, 2007**, at San Francisco, California.

  
\_\_\_\_\_  
Nancy Li

# Exhibit 1

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

12/06/2007  
CT Log Number 512859256



**TO:** Michael A James  
Cigna Companies  
TL21A, Two Liberty Place  
1801 Chestnut Street  
Philadelphia, PA 19192

**RE:** Process Served in California

**FOR:** Life Insurance Company of North America (Domestic State: PA)

M. James  
DEC 7

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Valerie Zgonc, Plff. vs. The Life Insurance Company of North America, et al., Dfts.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Summons, Complaint, Notice to Plaintiff, Attachments, Case Management Statement, Stipulation Form, Civil Case Cover Sheet

**COURT/AGENCY:** San Francisco County- San Francisco, Superior Court, CA  
Case # CGC07468133

**NATURE OF ACTION:** Insurance Litigation - Policy benefits claimed for disability benefits

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 12/05/2007 at 14:40

**APPEARANCE OR ANSWER DUE:** Within 30 days after service - file written response // April 11, 2008 at 9:00 a.m. -Case Management Conference

**ATTORNEY(S) / SENDER(S):** Terrance J. Coleman  
Pillsbury & Levinson, LLP  
The Transamerica Pyramid  
600 Montgomery Street  
31st Floor  
San Francisco, CA 94111  
415-433-8000

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Priority Overnight, 790398193082

**SIGNED:** C T Corporation System  
Nancy Flores  
818 West Seventh Street  
Los Angeles, CA 90017  
213-337-4515

**PER:**

**ADDRESS:**

**TELEPHONE:**

Page 1 of 1 / CP

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



**SUMMONS**  
(CITACION JUDICIAL)

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

**THE LIFE INSURANCE COMPANY OF NORTH AMERICA; THE VENTYX, INC. LONG TERM DISABILITY PLAN; and DOES 1 through 20, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
**VALERIE ZGONC**

SUM-100

FOR COURT USE ONLY  
(SOLAMENTE PARA USO DE LA CORTE)

12/5/07  
2:40 pm

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Francisco Superior Court  
400 McAllister Street  
San Francisco, CA 94102

CASE NO. **07-459133**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Terrence J. Coleman, Esq., SBN 172183, Pillsbury & Levinson LLP  
600 Montgomery Street, 31st Floor, San Francisco, CA 94111, 415/433-8000, Fax: 415/433-4816

DATE:

(Fecha)

**NOV 13 2007**

**GORDON, JEFFREY**  
(Secretary)

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **THE LIFE INSURANCE COMPANY OF NORTH AMERICA**  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)  
☐ other (specify):  
4. ☐ by personal delivery on (date):



Terrence J. Coleman (State Bar No. 172183)  
 Brian H. Kim (State Bar No. 215492)  
 PILLSBURY & LEVINSON, LLP  
 The Transamerica Pyramid  
 600 Montgomery Street, 31<sup>st</sup> Floor  
 San Francisco, California 94111  
 Telephone: (415) 433-8000  
 Facsimile: (415) 433-4816  
 E-mail: tcoleman@pillsburylevinson.com

Attorneys for Plaintiff,  
 VALERIE ZGONC,

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

VALERIE ZGONC,

Plaintiff,

v.

THE LIFE INSURANCE COMPANY OF  
 NORTH AMERICA; THE VENTYX, INC.  
 LONG TERM DISABILITY PLAN; and  
 DOES 1 through 20, inclusive,

Defendants.

Case No.:

COMPLAINT FOR RECOVERY OF  
 EMPLOYEE BENEFITS; BREACH  
 OF FIDUCIARY DUTY;  
 EQUITABLE RELIEF; and FAILURE  
 TO PRODUCE DOCUMENTS

JURY TRIAL DEMANDED

Plaintiff alleges on information and belief as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff VALERIE ZGONC is an individual currently residing in the State of Missouri, who at all relevant times was residing in the State of California.
2. Defendant THE LIFE INSURANCE COMPANY OF NORTH AMERICA ("LINA") was and is a business entity authorized to transact business in the State of California, including the sale, issuance and administration of

ENDORSED  
 FILED  
 San Francisco County Superior Court  
 NOV 13 2007  
 GORDON PARK-LI, Clerk  
 BY CRISTINA E. BAUTISTA  
 CASE MANAGEMENT CONFERENCE SET  
 APR 11 2008 - 9:00 AM

DEPARTMENT 212

07-469133

1 disability insurance and plan benefits.

2 3. Defendant THE VENTYX, INC. LONG TERM DISABILITY PLAN  
3 ("the Plan") is a long-term disability plan that was offered by INDUS  
4 INTERNATIONAL, INC., Plaintiff's former employer and the predecessor of  
5 VENTYX, INC. The Plan is an employee welfare benefit plan governed by the  
6 Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA").  
7 LINA was and remains the de facto plan administrator and fiduciary of the Plan.

8 4. Plaintiff is ignorant of the true names and capacities of Defendants  
9 sued herein as DOES 1 through 20, inclusive, and therefore sues these  
10 Defendants by said fictitious names. Plaintiff will amend this Complaint to allege  
11 their true names and capacities when they have been ascertained.

12 5. At all relevant times, Plaintiff was employed in San Francisco,  
13 California as a loan consultant for INDUS INTERNATIONAL, INC. and as such  
14 was enrolled in the Plan which it offered and which was insured through a group  
15 disability contract issued by LINA, Policy No. SLK0030007.

16 6. At all material times hereto, Plaintiff was insured under the Plan.  
17 Under the Plan and California law governing the definition of total disability,  
18 LINA promised, in relevant part, to pay monthly benefits in the event that she  
19 became unable to perform with reasonable continuity in the usual and  
20 customary manner the material and substantial duties of any gainful occupation  
21 for which she was reasonably fitted by reason of her training, education,  
22 experience and station in life.

23 7. At all material times herein, Plaintiff complied with all the material  
24 provisions pertaining to the Plan and/or compliance was waived by Defendants.  
25 While the Plan was in full force and effect, Plaintiff became disabled and entitled  
26 to benefits under the terms of the Plan as a result of, *inter alia*, bilateral carpal  
27 tunnel syndrome, chondromalacia in both knees necessitating multiple surgeries,

1 sacroillitis and arthritis in the back, and severe pain and weakness. Plaintiff has  
2 been, remains, and will be unable to perform the substantial and material duties  
3 of any gainful occupation.

4 8. Shortly after becoming disabled, Plaintiff timely applied for  
5 disability benefits under the Plan.

6 9. After submitting her claim for benefits, LINA paid monthly  
7 disability benefits for an extended period of time. Without conducting any  
8 reasonable or thorough investigation and without any evidence or information  
9 that Plaintiff's conditions had improved to allow a return to gainful employment,  
10 LINA wrongfully terminated benefits in or about January 9, 2006.

11 10. Thereafter, through counsel, Plaintiff timely appealed LINA'S  
12 termination of benefits and provided additional and overwhelming evidence in  
13 support of her physical impairments and continuing and permanent disability.

14 11. In letters dated April 20, 2006 and August 1, 2007, LINA purported  
15 to deny Plaintiff's appeals and maintained its denial of benefits.

16 12. As a direct and proximate result of the aforementioned acts of  
17 Defendants, and each of them, Plaintiff suffered damages as outlined below.

18 13. As the result of the actions of Defendants, and each of them,  
19 Plaintiff has been improperly denied disability benefits together with interest  
20 thereon and has suffered further and severe economic hardship and emotional  
21 distress.

22 14. As a further result of the actions of Defendants, and each of them,  
23 Plaintiff has been forced to engage the services of legal counsel for the purpose  
24 of obtaining her insurance benefits.

25 **FIRST CAUSE OF ACTION**  
26 **Recovery Of Employee Benefits**  
27 **(Against all Defendants; 29 U.S.C. § 1132(a)(1)(B))**

28 15. Plaintiff realleges and incorporates by reference herein Paragraphs

1 through 14 of this Complaint as though fully set forth herein.

16. At all relevant times, Plaintiff was insured under the Plan and Defendants were responsible for the administration and handling of Plaintiff's benefits.

17. At all material times herein, Plaintiff has complied with all the material provisions pertaining to the Plan, and/or compliance has been waived or Defendants are estopped from asserting non-compliance.

18. While the Plan was in full force and effect, Plaintiff became and remains totally disabled and entitled to receive benefits under the Plan.

19. LINA, however, terminated Plaintiff's claim for benefits and has refused and continues to refuse to make monthly disability payments to Plaintiff. Plaintiff appealed LINA's termination of benefits and exhausted her administrative remedies. The appeals were denied by letters dated April 20, 2006 and August 1, 2007.

20. Defendants' refusal to pay Plaintiff benefits violates the terms of the Plan, and Defendants' actions in administering Plaintiff's claim and in denying benefits were arbitrary and capricious. At all material times herein, Defendants, and each of them, failed and refused to honor the Plan. Defendants are liable for all benefits due under the Plan and LINA's policy, which have been improperly withheld from Plaintiff. Plaintiff's physical conditions are permanent. Accordingly, Plaintiff is and will continue to be entitled to monthly disability benefits through the applicable maximum benefit period of the Plan.

21. As a proximate result of Defendants' actions, Plaintiff has been deprived of her disability benefits to which she was and is entitled and has suffered damage as set forth in Paragraphs 12-14 above. Plaintiff further seeks a declaration as to her entitlement to future benefits, to wit: an injunction prohibiting Defendants from terminating her benefits until the end of the

1 maximum benefit period or such other declaration the Court deems proper.

2 **SECOND CAUSE OF ACTION**

3 **Breach of Fiduciary Duty**

4 (Against LINA and Does 11-20;

5 29 U.S.C. §§1104(a)(1); 1109; 1132(a)(2); 1132(a)(3))

6 22. Plaintiff realleges and incorporates by reference herein paragraphs  
7 1 through 21 of this Complaint as though fully set forth herein.

8 23. At all material times herein, Defendants, and each of them, were  
9 fiduciaries with respect to their exercise of authority over the management of the  
10 Plan, disposition of Plan assets, and administration of the Plan.

11 24. Plaintiff asserts a breach of fiduciary duty against LINA as an  
12 individual Plan participant and on behalf of all other the participants and  
13 beneficiaries of the Plan.

14 25. Plaintiff asserts that a claim for benefits due under the Plan does  
15 not provide her with an adequate remedy at law in light of LINA'S continuing  
16 course of conduct in violating the terms of the Plan and applicable law as  
17 described below.

18 26. Defendants, and each of them, were obliged to discharge their  
19 duties solely in the interests of beneficiaries and participants for the exclusive  
20 purpose of providing beneficiaries and participants benefits, defraying  
21 reasonable expenses of the Plan, using all prudent skill and diligence in  
22 accordance with the documents and instruments governing the Plan.

23 27. At all material times herein, Defendants, and each of them, violated  
24 these duties by, *inter alia*, the following:

- 25 A. Consciously and unreasonably failing to investigate or  
26 evaluate Plaintiff's claim, and related claims and/or similar  
27 claims, fairly or in good faith, but, on the other hand,  
28 utilizing the information available to it in a manner  
calculated to provide it with a wrongful but plausible

1                   sounding justification to deny benefits;

2                   B.   Consciously and unreasonably setting out to create a  
3                   plausible sounding basis upon which to deny Plaintiff's  
4                   claim, and related claims and/or similar claims, and seeking  
5                   to obtain information calculated to permit it to claim that it  
6                   had a plausible sounding basis upon which to deny  
7                   Plaintiff's benefits;

8                   C.   Consciously and unreasonably abusing its right to have  
9                   Plaintiff's purported physical condition examined as a  
10                  means to obtain a plausible basis to justify denial of benefits  
11                  rather than to fairly assess Plaintiff's disability, as  
12                  Defendants did with similar and/or related claims;

13                  D.   Consciously and unreasonably failing to investigate all bases  
14                  upon which to pay and honor Plaintiff's claim, and related  
15                  claims and/or similar claims, for benefits and consciously  
16                  and unreasonably failing to investigate all bases to support  
17                  coverage;

18                  E.   Consciously and unreasonably delaying, refusing, and  
19                  continuing to refuse to pay Plaintiff benefits, and related  
20                  claims and/or similar claims for benefits, properly payable  
21                  under the Plan and to deprive Plaintiff of her rightful  
22                  benefits with the knowledge that said delays and denials  
23                  were and are wrongful and contrary to their obligations  
24                  under the Plan and the law;

25                  F.   Consciously and unreasonably failing to investigate  
26                  Plaintiff's claim, and related claims and/or similar claims,  
27                  fairly and in good faith and refusing to give Plaintiff's  
28

1 interests or the interests of the Plan at least as much  
2 consideration as they gave their own;

3 G. Consciously and unreasonably failing to adopt and  
4 implement reasonable or proper standards applicable to the  
5 prompt and fair investigation, processing and adjudication  
6 of Plaintiff's claim, and related claims and/or similar claims,  
7 under the Plan;

8 H. Consciously and unreasonably interpreting the Plan in a  
9 manner designed to deny benefits and in a manner which  
10 thwarts the reasonable expectations of the Plan's  
11 beneficiaries and participants in order to maximize its own  
12 profits and minimize the benefits it pays claimants;

13 I. Consciously and unreasonably refusing to pay Plaintiff's  
14 claim, and related claims and/or similar claims, with the  
15 knowledge that Plaintiff's claim is payable and with the  
16 intent of saving them money at Plaintiff's expense. In  
17 particular, LINA has had and continues to have full  
18 knowledge that Plaintiff is disabled and entitled to total  
19 disability benefits under the Plan, but has nevertheless  
20 refused to pay and honor Plaintiff's known legitimate claim;  
21 and

22 J. Consciously and unreasonably failing to follow the terms of  
23 the Plan and applicable regulations governing the  
24 administration of claims, the review of denied claims, and  
25 required production of relevant documents.

26 28. As a proximate result of Defendants' actions, Plaintiff has been  
27 damaged as set forth in Paragraphs 12 through 14 above. In addition, Plaintiff  
28



1 seeks appropriate equitable relief from the Defendants, and each of them, by  
 2 being placed in the position she would have been in had Defendants not  
 3 breached the duties described herein, and had she been paid the benefits to  
 4 which she is entitled, including any and all benefits, interest, attorneys' fees and  
 5 other losses resulting from Defendants' breach.

### 6 THIRD CAUSE OF ACTION

#### 7 Equitable Relief

(Against LINA, and DOES 11-20 ; 29 U.S.C. §1132(a)(3))

8 29. Plaintiff realleges and incorporates by reference herein Paragraphs  
 9 1 through 28 of this Complaint as though fully set forth herein.

10 30. Defendants habitually violated their fiduciary duties in failing to act  
 11 in accordance with the documents governing the Plan, failing to use all prudent  
 12 skill and failing to uphold their duty of loyalty to act solely in the interest of the  
 13 participants and beneficiaries of the Plan, and failing to properly evaluate  
 14 Plaintiff's claim, among others, for benefits.

15 31. Plaintiff further alleges that Defendants, and each of them, have  
 16 breached their fiduciary duties by misapplying, misinterpreting and/or ignoring  
 17 relevant provisions of the Plan by, and hereby further requests a judgment  
 18 permanently enjoining Defendants from interpreting the Plan in the following  
 19 ways:

- 20 A. From denying benefits based upon an interpretation of
- 21 "total disability" different from that required under
- 22 applicable law and the Plan, including the requirement that a
- 23 claimant be unable to work with reasonable continuity in the
- 24 usual and customary way; and
- 25 B. From failing to obtain input from unbiased medical
- 26 consultants who are appropriately trained and experienced
- 27 in the conditions that are the subject of the claim;
- 28

32. Plaintiff further requests judgment permanently enjoining Defendants from ever again serving as a fiduciary with respect to the Plan, together with attorneys' fees and costs.

33. In addition, Plaintiff seeks appropriate equitable relief from the Defendants, and each of them, and seeks an order by this Court that her total disability benefits be reinstated, that Defendants be enjoined from terminating benefits for the duration of the applicable maximum benefit period under the Plan, and that she be placed in the position she would have been in had she been paid the benefits to which she is entitled, including, without limitation, interest, attorneys fees and other losses resulting from Defendants' breach.


WHEREFORE, Plaintiff prays as follows:

1. For a determination that Plaintiff is entitled to receive benefits under the Plan and an injunction mandating the payment of benefits to Plaintiff for the maximum benefit period under the Plan;
2. For damages according to proof;
3. For general damages according to proof;
4. For civil penalties as set forth above;
5. For attorneys' fees and costs of suit incurred herein;
6. For interest;
7. For equitable and injunctive relief as set forth above; and
8. For such other and further relief as the Court may find appropriate.

JURY TRIAL IS HEREBY DEMANDED

DATED: November 13, 2007

FILLSBURY & LEVINSON, LLP

By:   
Terrence J. Coleman, Esq.  
Attorneys for Plaintiff,  
VALERIE ZGONC

1 Terrence J. Coleman (State Bar No. 172183)  
2 Brian H. Kim (State Bar No. 215492)  
3 PILLSBURY & LEVINSON, LLP  
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ENDORSED  
FILED  
San Francisco County Superior Court

NOV 15 2007

GORDON PARK-LI, Clerk  
BY: MICHAEL RAYRAY  
Deputy Clerk

Attorneys for Plaintiff,  
VALERIE ZGONC,

IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

VALERIE ZGONC,

Plaintiff,

v.

THE LIFE INSURANCE COMPANY OF  
NORTH AMERICA; THE INDUS  
INTERNATIONAL, INC. LONG TERM  
DISABILITY PLAN; THE VENTYX, INC.  
LONG TERM DISABILITY PLAN; and  
DOES 1 through 20, inclusive,

Defendants.

Case No. 469133

FIRST AMENDED COMPLAINT  
FOR RECOVERY OF EMPLOYEE  
BENEFITS; BREACH OF  
FIDUCIARY DUTY; EQUITABLE  
RELIEF; and FAILURE TO  
PRODUCE DOCUMENTS

JURY TRIAL DEMANDED

Plaintiff alleges on information and belief as follows:

GENERAL ALLEGATIONS

1. Plaintiff VALERIE ZGONC is an individual currently residing in the State of Missouri, who at all relevant times was residing in the State of California.
2. Defendant THE LIFE INSURANCE COMPANY OF NORTH AMERICA ("LINA") was and is a business entity authorized to transact business

1 in the State of California, including the sale, issuance and administration of  
2 disability insurance and plan benefits.

3 3. Defendant THE INDUS INTERNATIONAL, INC. LONG TERM  
4 DISABILITY PLAN ("the Plan") is a long-term disability plan that was offered by  
5 INDUS INTERNATIONAL, INC., Plaintiff's former employer. Plaintiff is  
6 informed and believes and thereon alleges that the Plan has been renamed THE  
7 VENTYX, INC. LONG TERM DISABILITY PLAN upon the creation of VENTYX,  
8 INC. in early 2007 through the combination of INDUS INTERNATIONAL, INC.  
9 and MOBILE DATA SOLUTIONS, INC. Plaintiff thus names THE VENTYX, INC.  
10 LONG TERM DISABILITY PLAN as a Defendant in this action. The Plan was and  
11 is an employee welfare benefit plan governed by the Employee Retirement  
12 Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"). LINA was and remains  
13 the de facto plan administrator and fiduciary of the Plan.

14 4. Plaintiff is ignorant of the true names and capacities of Defendants  
15 sued herein as DOES 1 through 20, inclusive, and therefore sues these  
16 Defendants by said fictitious names. Plaintiff will amend this Complaint to allege  
17 their true names and capacities when they have been ascertained.

18 5. At all relevant times, Plaintiff was employed in San Francisco,  
19 California as a loan consultant for INDUS INTERNATIONAL, INC., and as such  
20 was enrolled in the Plan which it offered and which was insured through a group  
21 disability contract issued by LINA, Policy No. SLK0030007.

22 6. At all material times hereto, Plaintiff was insured under the Plan.  
23 Under the Plan and California law governing the definition of total disability,  
24 LINA promised, in relevant part, to pay monthly benefits in the event that she  
25 became unable to perform with reasonable continuity in the usual and  
26 customary manner the material and substantial duties of any gainful occupation  
27 for which she was reasonably fitted by reason of her training, education,  
28

1 experience and station in life.

2 7. At all material times herein, Plaintiff complied with all the material  
3 provisions pertaining to the Plan and/or compliance was waived by Defendants.  
4 While the Plan was in full force and effect, Plaintiff became disabled and entitled  
5 to benefits under the terms of the Plan as a result of, *inter alia*, bilateral carpal  
6 tunnel syndrome, chondromalacia in both knees necessitating multiple surgeries,  
7 sacroiliitis and arthritis in the back, and severe pain and weakness. Plaintiff has  
8 been, remains, and will be unable to perform the substantial and material duties  
9 of any gainful occupation.

10 8. Shortly after becoming disabled, Plaintiff timely applied for  
11 disability benefits under the Plan.

12 9. After submitting her claim for benefits, LINA paid monthly  
13 disability benefits for an extended period of time. Without conducting any  
14 reasonable or thorough investigation and without any evidence or information  
15 that Plaintiff's conditions had improved to allow a return to gainful employment,  
16 LINA wrongfully terminated benefits in or about January 9, 2006.

17 10. Thereafter, through counsel, Plaintiff timely appealed LINA'S  
18 termination of benefits and provided additional and overwhelming evidence in  
19 support of her physical impairments and continuing and permanent disability.

20 11. In letters dated April 20, 2006 and August 1, 2007, LINA purported  
21 to deny Plaintiff's appeals and maintained its denial of benefits.

22 12. As a direct and proximate result of the aforementioned acts of  
23 Defendants, and each of them, Plaintiff suffered damages as outlined below.

24 13. As the result of the actions of Defendants, and each of them,  
25 Plaintiff has been improperly denied disability benefits together with interest  
26 thereon and has suffered further and severe economic hardship and emotional  
27 distress.

28

1           14. As a further result of the actions of Defendants, and each of them,  
2 Plaintiff has been forced to engage the services of legal counsel for the purpose  
3 of obtaining her insurance benefits.

4                               **FIRST CAUSE OF ACTION**  
5                               **Recovery Of Employee Benefits**  
6                               **(Against all Defendants; 29 U.S.C. § 1132(a)(1)(B))**

7           15. Plaintiff realleges and incorporates by reference herein Paragraphs  
8 1 through 14 of this Complaint as though fully set forth herein.

9           16. At all relevant times, Plaintiff was insured under the Plan and  
10 Defendants were responsible for the administration and handling of Plaintiff's  
11 benefits.

12           17. At all material times herein, Plaintiff has complied with all the  
13 material provisions pertaining to the Plan, and/or compliance has been waived  
14 or Defendants are estopped from asserting non-compliance.

15           18. While the Plan was in full force and effect, Plaintiff became and  
16 remains totally disabled and entitled to receive benefits under the Plan.

17           19. LINA, however, terminated Plaintiff's claim for benefits and has  
18 refused and continues to refuse to make monthly disability payments to Plaintiff.  
19 Plaintiff appealed LINA's termination of benefits and exhausted her  
20 administrative remedies. The appeals were denied by letters dated April 20, 2006  
21 and August 1, 2007.

22           20. Defendants' refusal to pay Plaintiff benefits violates the terms of  
23 the Plan, and Defendants' actions in administering Plaintiff's claim and in denying  
24 benefits were arbitrary and capricious. At all material times herein, Defendants,  
25 and each of them, failed and refused to honor the Plan. Defendants are liable for  
26 all benefits due under the Plan and LINA's policy, which have been improperly  
27 withheld from Plaintiff. Plaintiff's physical conditions are permanent.  
28 Accordingly, Plaintiff is and will continue to be entitled to monthly disability

1 benefits through the applicable maximum benefit period of the Plan.

2 21. As a proximate result of Defendants' actions, Plaintiff has been  
3 deprived of her disability benefits to which she was and is entitled and has  
4 suffered damage as set forth in Paragraphs 12-14 above. Plaintiff further seeks a  
5 declaration as to her entitlement to future benefits, to wit: an injunction  
6 prohibiting Defendants from terminating her benefits until the end of the  
7 maximum benefit period or such other declaration the Court deems proper.

8 **SECOND CAUSE OF ACTION**

9 **Breach of Fiduciary Duty**

(Against LINA and Does 11-20;

10 29 U.S.C. §§1104(a)(1); 1109; 1132(a)(2); 1132(a)(3))

11 22. Plaintiff realleges and incorporates by reference herein paragraphs  
12 1 through 21 of this Complaint as though fully set forth herein.

13 23. At all material times herein, Defendants, and each of them, were  
14 fiduciaries with respect to their exercise of authority over the management of the  
15 Plan, disposition of Plan assets, and administration of the Plan.

16 24. Plaintiff asserts a breach of fiduciary duty against LINA as an  
17 individual Plan participant and on behalf of all other the participants and  
18 beneficiaries of the Plan.

19 25. Plaintiff asserts that a claim for benefits due under the Plan does  
20 not provide her with an adequate remedy at law in light of LINA'S continuing  
21 course of conduct in violating the terms of the Plan and applicable law as  
22 described below.

23 26. Defendants, and each of them, were obliged to discharge their  
24 duties solely in the interests of beneficiaries and participants for the exclusive  
25 purpose of providing beneficiaries and participants benefits, defraying  
26 reasonable expenses of the Plan, using all prudent skill and diligence in  
27 accordance with the documents and instruments governing the Plan.

28 27. At all material times herein, Defendants, and each of them, violated



1 these duties by, *inter alia*, the following:

- 2 A. Consciously and unreasonably failing to investigate or  
3 evaluate Plaintiff's claim, and related claims and/or similar  
4 claims, fairly or in good faith, but, on the other hand,  
5 utilizing the information available to it in a manner  
6 calculated to provide it with a wrongful but plausible  
7 sounding justification to deny benefits;
- 8 B. Consciously and unreasonably setting out to create a  
9 plausible sounding basis upon which to deny Plaintiff's  
10 claim, and related claims and/or similar claims, and seeking  
11 to obtain information calculated to permit it to claim that it  
12 had a plausible sounding basis upon which to deny  
13 Plaintiff's benefits;
- 14 C. Consciously and unreasonably abusing its right to have  
15 Plaintiff's purported physical condition examined as a  
16 means to obtain a plausible basis to justify denial of benefits  
17 rather than to fairly assess Plaintiff's disability, as  
18 Defendants did with similar and/or related claims;
- 19 D. Consciously and unreasonably failing to investigate all bases  
20 upon which to pay and honor Plaintiff's claim, and related  
21 claims and/or similar claims, for benefits and consciously  
22 and unreasonably failing to investigate all bases to support  
23 coverage;
- 24 E. Consciously and unreasonably delaying, refusing, and  
25 continuing to refuse to pay Plaintiff benefits, and related  
26 claims and/or similar claims for benefits, properly payable  
27 under the Plan and to deprive Plaintiff of her rightful  
28

1 benefits with the knowledge that said delays and denials  
2 were and are wrongful and contrary to their obligations  
3 under the Plan and the law;

4 F. Consciously and unreasonably failing to investigate  
5 Plaintiff's claim, and related claims and/or similar claims,  
6 fairly and in good faith and refusing to give Plaintiff's  
7 interests or the interests of the Plan at least as much  
8 consideration as they gave their own;

9 G. Consciously and unreasonably failing to adopt and  
10 implement reasonable or proper standards applicable to the  
11 prompt and fair investigation, processing and adjudication  
12 of Plaintiff's claim, and related claims and/or similar claims,  
13 under the Plan;

14 H. Consciously and unreasonably interpreting the Plan in a  
15 manner designed to deny benefits and in a manner which  
16 thwarts the reasonable expectations of the Plan's  
17 beneficiaries and participants in order to maximize its own  
18 profits and minimize the benefits it pays claimants;

19 I. Consciously and unreasonably refusing to pay Plaintiff's  
20 claim, and related claims and/or similar claims, with the  
21 knowledge that Plaintiff's claim is payable and with the  
22 intent of saving them money at Plaintiff's expense. In  
23 particular, LINA has had and continues to have full  
24 knowledge that Plaintiff is disabled and entitled to total  
25 disability benefits under the Plan, but has nevertheless  
26 refused to pay and honor Plaintiff's known legitimate claim;  
27 and  
28

J. Consciously and unreasonably failing to follow the terms of the Plan and applicable regulations governing the administration of claims, the review of denied claims, and required production of relevant documents.

28. As a proximate result of Defendants' actions, Plaintiff has been damaged as set forth in Paragraphs 12 through 14 above. In addition, Plaintiff seeks appropriate equitable relief from the Defendants, and each of them, by being placed in the position she would have been in had Defendants not breached the duties described herein, and had she been paid the benefits to which she is entitled, including any and all benefits, interest, attorneys' fees and other losses resulting from Defendants' breach.

### THIRD CAUSE OF ACTION

#### Equitable Relief

(Against LINA, and DOES 11-20 ; 29 U.S.C. §1132(a)(3))

29. Plaintiff realleges and incorporates by reference herein Paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. Defendants habitually violated their fiduciary duties in failing to act in accordance with the documents governing the Plan, failing to use all prudent skill and failing to uphold their duty of loyalty to act solely in the interest of the participants and beneficiaries of the Plan, and failing to properly evaluate Plaintiff's claim, among others, for benefits.

31. Plaintiff further alleges that Defendants, and each of them, have breached their fiduciary duties by misapplying, misinterpreting and/or ignoring relevant provisions of the Plan by, and hereby further requests a judgment permanently enjoining Defendants from interpreting the Plan in the following ways:

A. From denying benefits based upon an interpretation of "total disability" different from that required under

1 applicable law and the Plan, including the requirement that a  
2 claimant be unable to work with reasonable continuity in the  
3 usual and customary way; and

4 B. From failing to obtain input from unbiased medical  
5 consultants who are appropriately trained and experienced  
6 in the conditions that are the subject of the claim;

7 32. Plaintiff further requests judgment permanently enjoining  
8 Defendants from ever again serving as a fiduciary with respect to the Plan,  
9 together with attorneys' fees and costs.

10 33. In addition, Plaintiff seeks appropriate equitable relief from the  
11 Defendants, and each of them, and seeks an order by this Court that her total  
12 disability benefits be reinstated, that Defendants be enjoined from terminating  
13 benefits for the duration of the applicable maximum benefit period under the  
14 Plan, and that she be placed in the position she would have been in had she been  
15 paid the benefits to which she is entitled, including, without limitation, interest,  
16 attorneys' fees and other losses resulting from Defendants' breach.

17 WHEREFORE, Plaintiff prays as follows:

18 1. For a determination that Plaintiff is entitled to receive benefits  
19 under the Plan and an injunction mandating the payment of benefits to Plaintiff  
20 for the maximum benefit period under the Plan;

21 2. For damages according to proof;

22 3. For general damages according to proof;

23 4. For civil penalties as set forth above;

24 5. For attorneys' fees and costs of suit incurred herein;

25 6. For interest;

26 7. For equitable and injunctive relief as set forth above; and

27 8. For such other and further relief as the Court may find  
28

1 appropriate.

2 JURY TRIAL IS HEREBY DEMANDED

3 DATED: November 15, 2007

PILLSBURY & LEVINSON, LLP

4  
5 By: Brian H. Kim  
6 Brian H. Kim, Esq.  
7 Attorneys for Plaintiff,  
8 VALERIE ZGONC  
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CASE NUMBER: CGC-07-469133 VALERIE ZGONE VS. THE LIFE INSURANCE COMPANY O

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for

**DATE: APR-11-2008**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges



## Superior Court of California County of San Francisco

HON. DAVID BALLATI  
PRESIDING JUDGE

### Judicial Mediation Program

JENNIFER B. ALCANTARA  
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati  
The Honorable Anne Boulane  
The Honorable Ellen Chaffin  
The Honorable Robert L. Dondero  
The Honorable Ernest H. Goldsmith  
The Honorable Harold E. Kahn  
The Honorable Patrick J. Mahoney  
The Honorable Tomas Mason

The Honorable James J. McBride  
The Honorable Kevin M. McCarthy  
The Honorable John B. Munter  
The Honorable Ronald Quidachay  
The Honorable A. James Robertson, II  
The Honorable John K. Stewart  
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
(415) 551-3876



## **Alternative Dispute Resolution (ADR) Program Information Package**

# **Alternatives to Trial**

**There are other ways to  
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package  
on each defendant along with the complaint. (CRC 201.9(c))**

**Superior Court of California  
County of San Francisco**

## **Introduction**

**Did you know that most civil lawsuits settle without a trial?**

**And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?**

**These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.**

**In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.**

**ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.**

## **Advantages of ADR**

**ADR can have a number of advantages over a lawsuit.**

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorneys fees, and expert fees can be saved.
- **ADR can be cooperative.** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- **ADR encourages participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- **ADR is flexible.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

## **Disadvantages of ADR**

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

## **ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court**

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."  
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

### **JUDICIAL ARBITRATION**

#### ***Description***

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

### ***Operation***

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

### ***Cost***

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

## **MEDIATION**

### ***Description***

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

### ***Operation***

San Francisco Superior Court Local Court Rule 4 provides three different voluntary mediation programs for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at [www.sfgov.org/courts](http://www.sfgov.org/courts). Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

### ***Private Mediation***

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

### ***Mediation Services of the Bar Association of San Francisco***

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by the court pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$200 per party administration fee, parties select a specific mediator from the list of court approved mediation providers. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at [www.sfbar.org](http://www.sfbar.org), or you may call BASF at 415-782-9000.

### ***Judicial Mediation***

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.



### **Cost**

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

## **EARLY SETTLEMENT PROGRAM**

### **Description**

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

### **Operation**

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

If a matter is assigned to the ESP by the Court, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

#### **Cost**

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

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For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

or visit the Superior Court Website at  
[http://sfgov.org/site/courts\\_page.asp?id=3672](http://sfgov.org/site/courts_page.asp?id=3672)

1. **Party or parties (answer one):**
  - a. ☐ This statement is submitted by party (name):
  - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
  - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

PLAINTIFF/PETITIONER:	CASE NUMBER
DEFENDANT/RESPONDENT:	

CM-110

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial  
The party or parties request ☐ a jury trial ☐ a nonjury trial (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date  
a. ☐ The trial has been set for (date):  
b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial  
The party or parties estimate that the trial will take (check one):  
a. ☐ days (specify number):  
b. ☐ hours (short cases) (specify):

8. Trial representation (to be answered for each party)  
The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:  
a. Attorney:  
b. Firm:  
c. Address:  
d. Telephone number:  
e. Fax number:  
f. E-mail address:  
g. Party represented:  
☐ Additional representation is described in Attachment 8.

9. Preference  
☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)  
a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.  
b. ☐ All parties have agreed to a form of ADR, ADR will be completed by (date):  
c. ☐ The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation  
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
 (4) ☐ Binding judicial arbitration  
 (5) ☐ Binding private arbitration  
 (6) ☐ Neutral case evaluation  
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.  
☐ Bankruptcy ☐ Other (specify):  
 Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.  
 (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:  
☐ Additional cases are described in Attachment 14a.  
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

## 17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):

Party

Description

Date

- c. ☐ The following discovery issues are anticipated (specify):

## 18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

## 19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

## 20. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

## 21. Case management orders

Previous case management orders in this case are (check one): ☐ none ☐ attached as Attachment 21.

## 22. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

CM-110 (Rev. January 1, 2007)

CASE MANAGEMENT STATEMENT

Page 4 of 4

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**  
400 McAllister Street, San Francisco, CA 94102-4614

<p align="center">v.      Plaintiff</p>  <p align="center">Defendant</p>	<p>Case No. _____</p> <p align="center"><b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION</b></p>
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The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Private Mediation<br><input type="checkbox"/> Binding arbitration<br><input type="checkbox"/> Non-binding judicial arbitration<br><input type="checkbox"/> BASF Early Settlement Program<br><input type="checkbox"/> Other ADR process (describe) _____ | <input type="checkbox"/> Mediation Services of BASF<br><br><input type="checkbox"/> Judge _____<br><input type="checkbox"/> Judge _____ | <input type="checkbox"/> Judicial Mediation<br><br><input type="checkbox"/> Judge _____<br><input type="checkbox"/> Judge _____ |
|--|---|---|

Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

☐ Additional signature(s) attached



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Terrence J. Coleman, Esq., SBN 172183 Pillsbury & Levinson, LLP 600 Montgomery Street, 31st Floor, San Francisco, CA 94111 TELEPHONE NO.: 415/433-8000 FAX NO.: 415/433-4816		ENCLOSED <b>FILED</b> San Francisco County Superior Court NOV 18 2007 GORDON PARK-LI, Clerk CRISTINA E. BAUTISTA COURT CLERK
ATTORNEY FOR PLAINTIFF: Plaintiff Valerie Zgonc SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94111 BRANCH NAME:		
CASE NAME: <b>Valerie Zgonc, Plaintiff, vs. The Life Insurance Co., et al., Defendants</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) Complex Case Designation: <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)		
CASE NUMBER: <b>07-cv-06359</b>		DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (45) <b>Other PUPDWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPDWD (23) <b>Non-PUPDWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (12) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPDWD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (16) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandamus (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> FICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court f. <input type="checkbox"/> Substantial post-judgment judicial supervision
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3. Type of remedies sought (check all that apply):  
 a. ☒ monetary     b. ☒ nonmonetary; declaratory or injunctive relief     c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

Date: November 13, 2007

Terrence J. Coleman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.

File this cover sheet in addition to any cover sheet required by local court rule.

If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.

Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-018 (Rev. July 1, 2003)

**CIVIL CASE COVER SHEET**

American LegalNet, Inc.  
 www.AJSCourtForms.com

Cal. Rules of Court, rules 201.8, 1800-1812;  
 Standards of Judicial Administration, § 18  
 www.courts.ca.gov

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

### To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must check all five items on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.6(c) and 227 of the California Rules of Court.

### To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### CASE TYPES AND EXAMPLES

#### Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

#### Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PVPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PVPD/WD

#### Non-PVPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (18)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PVPD/WD Tort (35)

#### Employment

Wrongful Termination (36)  
Other Employment (15)

#### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

#### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

#### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential.)

#### Judicial Review

Asset Forfeiture (05)  
Petition for Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rule 1800-1812)

Antitrust/Trade Regulation (09)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Toxic Tort/Environmental (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

#### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Tax  
Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

#### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Valerie Zgonc,

## DEFENDANTS

The Life Insurance Company of North America; The Indus International, Inc. Long Term Disability Plan; The Ventyx, Inc. Long Term Disability Plan; and Does 1 through 20, inclusive.

(b) County of Residence of First Listed Plaintiff State of Missouri  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Terrence J. Coleman, Esq.  
Brian H. Kim, Esq.  
PILLSBURY & LEVINSON, LLP  
The Transamerica Pyramid  
600 Montgomery St., 3rd Fl., San Francisco, CA 94111

Attorneys (If Known)

Adrienne C. Publicover, Esq.  
Dennis J. Rhodes, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
525 Market Street, 17th Floor  
San Francisco, CA 94105

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting			<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 510 Motion to Vacate Sentence		
	<input type="checkbox"/> 440 Other Civil Rights	<b>Habeas Corpus:</b>		
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. §1332(e)(1) (Federal Question - ERISA)

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 0.00  
UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE December 14, 2007 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

NDC-JS44

**CERTIFICATE OF SERVICE**

*Valerie Zgonc v. The Life Insurance Company of North America, et al.*

I am over the age of eighteen years and am not a party to the within cause. I am employed in the City and County of San Francisco, California and my business address are 525 Market Street, 17th Floor, and San Francisco, California 94105-2725.

On this date I served the following document(s):

**CIVIL COVER SHEET**

on the part(y)(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

➔ : **By First Class Mail** -- I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection to the office of the addressee following ordinary business practices.

: **By Personal Service** -- I caused each such envelope to be given to a courier messenger who personally delivered each such envelope to the office of the address.

: **By Overnight Courier** -- I caused each such envelope to be given to an overnight mail service at San Francisco, California, to be hand delivered to the addressee on the next business day.

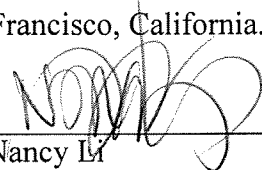
: **Facsimile** -- (Only where permitted. Must consult CCP §1012.5 and California Rules of Court 2001-2011. Also consult FRCP Rule 5(e). Not currently authorized in N.D.CA.)

Terrence J. Coleman, Esq.  
Brian H. Kim, Esq.  
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The Transamerica Pyramid  
600 Montgomery Street, 31<sup>st</sup> Floor  
San Francisco, CA 94111  
Tel: (415) 433-8000  
Fax: (415) 433-4816

***Attorneys for Plaintiff***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

EXECUTED on **December 14, 2007**, at San Francisco, California.

  
\_\_\_\_\_  
Nancy Li